



Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

"Working together on water and Delta issues"

August 17, 2010

Delta Stewardship Council Members

P. Joseph Grindstaff, Interim Executive Officer

Chris Stevens, Chief Counsel

650 Capitol Mall, Fifth Floor

Sacramento, CA 95814

Via E mail

Subject: Delta Counties Coalition Comments Regarding Revised Administrative Appeals (Parts I, II and III)

Dear Council Members, Mr. Grindstaff and Mr. Stevens:

Following the Delta Stewardship Council meetings in Clarksburg on July 22 and 23, 2010, the Delta Counties Coalition met with Mr. Stevens to go over our concerns and issues with the then proposed draft of the Administrative Appeals Procedure. We want to take this opportunity to thank the Council and to Mr. Stevens for the time he took to meet with us and to have a meaningful dialogue.

It remains our desire to be an active partner with the Delta Stewardship Council and to have future meaningful opportunities to engage in constructive early discussions as the Delta Plan and other actions are contemplated.

Based on the new re-drafted version of the appeal procedures as presented on August 12, 2010, we wish to express our appreciation for the revisions you have made in an attempt to address our issues and concerns. We believe these are much more workable procedures. While these procedures do pose new administrative burdens, we can live with them depending on how they will be applied in real time with real appeals. We do request that the Council review and consider appropriate revisions to the procedures after adoption of the Delta Plan and as actual experience with the appeal process develops over time. As the procedures become implemented we will continue to work with you and your staff if and when they need future revision to improve and facilitate a workable process.

While we believe these procedures would benefit from further review and public input before final adoption, we will support the adoption of the amended procedures as presented to us on August 12, 2010. However, we do have an additional significant concern pertaining to the Administrative Procedures regarding BDCP appeals.

Portions of the Administrative Procedures relating to BDCP appeals under Water Code § 85320, remain inadequate. In deciding such appeals, the Council will independently review the Department of Fish and Game's determination that the BDCP meets the requirements of Section 85320(b). This will likely be a very complex and fact-intensive undertaking that will require a close examination of all relevant evidence in a

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de novo hearing. Despite this, the Administrative Procedures are largely silent on how such appeals will be carried out.

Council staff should draft those provisions in a manner that attempts to ensure fair, thorough, and timely consideration of any appeal. Those goals are achieved by provisions that (a) authorize both written submissions and oral testimony as part of the de novo proceeding and (b) require detailed findings supported by specific evidence in the record before the Council. These are sound requirements that should be extended to BDCP appeals arising under Water Code § 85320.

Accordingly, the Delta Counties respectfully ask the Council to direct staff to conform provisions of the Administrative Procedures addressing the BDCP to the procedures for all other appeals. Council staff have correctly concluded that the independent judgment standard applies to BDCP appeals under Water Code § 85320(d). This standard requires the Council to rigorously analyze all issues of fact and law raised in such appeals in a de novo hearing without any deference to prior determinations of the Department. Given the scope and complexity of this task, the Council should ensure that the Administrative Procedures document includes rules for BDCP appeals that are clear, detailed, and consistent with the same principles reflected in the rules applicable to all other state and local agency actions. In paragraph 23, the following language should also be added: "The decision shall include detailed findings supported by specific reference to documentary or oral evidence in the record before the Council".

The Delta Counties Coalition appreciates the opportunity to provide these comments to the Council as we are the home to the residents, businesses, recreation facilities and agriculture of the Delta.

Sincerely,



Mary Nejedly Piepho
Supervisor, Contra Costa County



Michael J. Reagan
Supervisor, Solano County



Don Nottoli
Supervisor, Sacramento County



Mike McGowan
Supervisor, Yolo County



Larry Ruhstaller
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